

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JACOB L. MARTIN,

Petitioner,

CASE NO. 2:08-cv-1073

JUDGE GRAHAM

v.

MAGISTRATE JUDGE PRESTON DEAVERS

ROD FRANCIS,¹

Respondent.

OPINION AND ORDER

On June 9, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections and two supplemental memoranda opposing the Magistrate Judge's *Report and Recommendation*. Doc. Nos. 12, 13 & 14. Petitioner again argues that he was denied a fair trial because the trial court failed to issue a jury instruction on the defense of accident. Liberally construing his objections, he also objects to the Magistrate Judge's recommendation of dismissal of his claim regarding insufficiency of the evidence. For the reasons that follow, petitioner's objections are

OVERRULED.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. Viewing all of the evidence in the light most favorable to the prosecution, this Court agrees that the evidence was constitutionally sufficient to sustain petitioner's convictions on reckless

¹ Rod Francis is the Assistant Chief of the Bureau of Medical Services at the Corrections Medical Center where petitioner is incarcerated. *See Return of Writ*, n.1.

homicide with a firearm specification. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Further, errors in jury instructions are generally not cognizable in federal habeas corpus unless they deprive the petitioner of a fundamentally fair trial. *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977); *see also Wood v. Marshall*, 790 F.2d 548, 551-52 (6th Cir. 1986); *Thomas v. Arn*, 704 F.2d 865, 868-69 (6th Cir. 1983). A habeas petitioner challenging jury instructions must establish that “the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process.” *Cupp v. Naughten*, 414 U.S. 141, 147 (1973). For the reasons detailed in the Magistrate Judge’s *Report and Recommendation*, petitioner has failed to meet this standard here.

Therefore, petitioner’s objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

S/ James L. Graham
JAMES L. GRAHAM
United States District Judge

Date: July 21, 2010